CBA | CONSUMER BANKERS ASSOCIATION

May 10, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

***Via* e-mail: regs.comments@federalreserve.gov**

Re: Docket Number R-1186--Regulation C

Dear Ms. Johnson:

The Consumer Bankers Association (CBA)[1] appreciates the opportunity to comment on the revised formats for public disclosure of mortgage lending data reported by the Federal Reserve Board (the Board) pursuant to the Home Mortgage Disclosure Act (HMDA) and Regulation C, in light of revisions to Regulation C requiring lending institutions to report new loan pricing and other data.

We have one general comment and several comments of a more technical nature.

General Comment

Our greatest concern regarding the release of the data that employing the revised format is the likelihood that any disparities in pricing by race, ethnicity, gender or geography

[1] The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery. CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets.

will be misrepresented in the media and in public discourse as an indicator of discriminatory practices. We know that the Board and the other regulatory agencies are very aware of the limitations of these data. Pricing is based on numerous factors (including credit history, product differences, geographical cost factors, loan-to-value ratios, debt-to-income ratios, etc), many of which are not included in the information reported pursuant to HMDA. This is not news to the Board or the other regulatory agencies; they understand what the data will show and what they will not show. But our experience with HMDA data in the past suggests that the public may view the information as some kind of prima facie evidence of guilt, reputations will be at risk, and litigators will employ the confusion to their advantage.

It is not possible to educate everyone in the complexities of HMDA, so the Board should take advantage of the release of the data format to put them in context for the reader. The data release is the proverbial “teachable moment.” We strongly recommend that the Board prominently disclose the limitations of the data on each of the Tables, state that nothing in the data should be considered to be evidence of wrongdoing, and warn against drawing conclusions from them.

It is also important that the Board use neutral terminology in all its discourse. As the information being included in the tabular format includes pricing data only for loans that exceed the designated threshold (first liens of 3 percentage points and junior liens of 5 percentage points over Treasuries of comparable maturity), we have often heard them designated as “subprime loans” or “nonprime loans.” However, there is no universally recognized measure of a “subprime” loan, and not every loan that exceeds the threshold fits the lender’s definition of subprime. Lenders who do not consider themselves to be in the subprime business may nevertheless find that some of their loans exceed the threshold.

Although these thresholds were chosen to be a rough indication of where so-called prime lending leaves off and nonprime lending begins, we do not wish to see them become a federal definition of subprime or nonprime lending. This could easily occur, unless the

Board makes a conscious effort to avoid referring to them as such. References that might be considered pejorative, such as “high-cost loans,” should likewise be avoided. If it is necessary to categorize these loans, we recommend a neutral term such as “threshold loans” or “loans exceeding the thresholds.”

Joint Applicants

Some confusion is caused by the creation of two categories within the “Race” designation: “White-Hispanic or Latino” and “White-Not Hispanic or Latino.” The Board’s purpose appears to be to create a category which is substantially equivalent to the category “White” under the previous reporting requirements. This would allow some continuity in the data analysis.

A problem could arise with joint applicants, where one is white-Hispanic or Latino and the other is white-not Hispanic or Latino. These could be considered “joint race” applications, since both categories are within the designation of “race,” rather than “joint ethnicity” applications (since one is Hispanic or Latino and the other is not). This will create confusion and the possibility of error.

Mean and Median

The Table 11 Series with the rate-spread data includes data on both the mean and median percentage points over the Treasury yield, itemized by borrower or census tract characteristics. We recommend that these be removed from the reports, as they serve no useful purpose and can easily mislead.

The mean and median would be calculated only for loans on which the institution reported rate spread data. We are concerned that this will lead to serious misunderstanding. For many institutions, the loans with reportable rate spread data (i.e. loans over the HMDA thresholds) represent only a small fraction of their loans. Therefore, the actual mean and median interest rate on loans originated by these institutions would be lower than the figure that could be extrapolated from the reported spreads. One institution with lower total mean and median rates than another might appear to have higher rates merely due to the anomalies of the report. This information creates another piece of information that is misleading to the public, perhaps even suggesting discriminatory pricing where none exists. We therefore recommend that mean and median data figures be eliminated from the tables.

FHA/VA Loans

We recommend the inclusion of pricing data on FHA and VA loans. FHA and VA loans tend to be priced between nonprime loans prime and conventional loans, and are often the most valuable loans that an institution can offer to meet the needs of its communities, including low- and moderate-income consumers. Leaving them off the tables suggests that they are either not important or not significant, yet they have been and continue to be a major part of many institutions' home-secured lending. Since the public will use the tables to determine an institution's lending patterns in the community, removing data on government-backed loans paints a manifestly false picture of the lending of many financial institutions—something the Board would certainly not wish to do. We therefore recommend that the Board include pricing data on government-backed loans.

Preapprovals Approved But Not Accepted

We recommend that Table A-1 indicate that it is optional to report preapprovals that are approved by the institution but not accepted by the consumer. Otherwise those who were not aware that it is optional might view the absence of such data negatively.

Thank you once again for the opportunity to comment on the proposed format. If you have any questions, please feel free to contact me.

Very truly yours,

Steven I. Zeisel
Senior Counsel